

JUDGMENT OF THE COURT (Third Chamber)

10 September 2009*

In Case C-416/07,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 4 September 2007,

Commission of the European Communities, represented by H. Tserepa-Lacombe and F. Erlbacher, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Hellenic Republic, represented by S. Charitaki, S. Papaïoannou and E.-M. Mamouna, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: Greek.

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, J. Klučka (Rapporteur), U. Löhmus, P. Lindh and A. Arabadjiev, Judges,

Advocate General: V. Trstenjak,
Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 22 January 2009,

after hearing the Opinion of the Advocate General at the sitting on 2 April 2009,

gives the following

Judgment

¹ By its application, the Commission of the European Communities requests the Court to declare that, by failing to take all the measures necessary:

— to ensure that any transporter of animals is covered by an authorisation from the competent authority and is registered in a manner enabling the competent

authority to identify him rapidly, in particular in the event of failure to comply with the rules regarding animal welfare rules during transport;

- to ensure that the competent authorities carry out obligatory checks of the route plan/journey log;

- to provide for facilities in or in the immediate vicinity of ferry ports to enable animals to rest after unloading;

- so as to ensure that the inspections of the means of transport and the animals are actually carried out;

- to ensure that effective, proportionate and dissuasive penalties are imposed in the event of repeated or serious infringements of the provisions relating to the protection of animals during transport,

- to ensure that the rules on the stunning of animals at the time of slaughter are complied with, and

- to ensure that inspections and controls in slaughterhouses are carried out in an appropriate manner,

the Hellenic Republic has failed to fulfil its obligations under Article 5(A)(1)(a)(i) and (ii), Article 5(A)(2)(b), the first indent of Article 5(A)(2)(d)(i) and Articles 8, 9 and 18(2) of Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC (OJ 1991 L 340, p. 17), as amended by Council Regulation (EC) No 806/2003 of 14 April 2003 (OJ 2003 L 122, p. 1) ('Directive 91/628'), under point 48.7(b) of Chapter VII of the Annex to that directive and, from 5 January 2007, under Articles 5(4), 6(1), 13(3) and (4), 15(1), 25, 26 and 27(1) of Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (OJ 2005 L 3, p. 1) and under Articles 3, 5(1)(d), 6(1) and 8 of Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing (OJ 1993 L 340, p. 21), as amended by Regulation No 1/2005 ('Directive 93/119').

Legal context

Community legislation

Directive 91/628

² Article 5(A)(1)(a)(i) and (ii) of Directive 91/628 provides:

'Member States shall ensure that:

(1) any transporter:

(a) is:

- (i) registered in a manner enabling the competent authority to identify the person rapidly in the event of failure to comply with the requirements of this Directive;

- (ii) covered by an authorisation valid for all transport of vertebrate animals carried out in one of the territories referred to in Annex I to Directive 90/675/EEC, granted by the competent authority of the Member State of establishment or, if an undertaking established in a third country is concerned, by a competent authority of a Member State of the Union, subject to a written undertaking by the person in charge of the transport undertaking to comply with the requirements of the Community veterinary legislation in force.³

³ Article 5(A)(2)(b) of Directive 91/628 provides:

‘Member States shall ensure that:

...

(2) the transporter:

...

(b) for the animals referred to in Article 1(1)(a) which are to be traded between Member States or exported to third countries, and in cases where the journey time exceeds eight hours, draws up a route plan in accordance with the specimen in Chapter VIII of the Annex, which will be attached to the health certificate during the journey, and also indicates any staging and transfer points.'

⁴ The first indent of Article 5(A)(2)(d)(i) of Directive 91/628 provides:

'Member States shall ensure that:

...

(2) the transporter:

(d) ensures:

(i) that the original copy of the route plan referred to in (b):

— is duly drawn up and completed by the appropriate persons at the appropriate time’.

5 Article 8 of Directive 91/628 provides:

‘Member States shall ensure that, in accordance with the principles and rules of control laid down in Directive 90/425/EEC, the competent authorities check that the requirements of this Directive have been complied with, by carrying out non-discriminatory inspections of:

(a) means of transport and animals during transport by road;

(b) means of transport and animals arriving at their place of destination;

(c) means of transport and animals at markets, at places of departure, at staging points and at transfer points;

(d) the particulars on the accompanying documents.

Such inspections must be carried out on an adequate sample of the animals transported each year within each Member State, and may be carried out at the same time as checks for other purposes.

The competent authority in each Member State shall submit to the Commission an annual report stating the number of inspections carried out in the preceding calendar year in respect of each of the points (a), (b), (c) and (d) and including details of any reported infringements and the action taken as a result by the competent authority.

Furthermore, where the competent authority of a Member State has information leading it to suspect an infringement, checks may also be carried out during the transport of animals on its territory.

This Article shall not affect checks carried out as part of tasks conducted in a non-discriminatory manner by authorities responsible for the general application of laws in a Member State.'

6 Article 9(1) of Directive 91/628 provides:

'1. If it is found in the course of transport that the provisions of this Directive are not being or have not been complied with, the competent authority of the place at which such a finding is made shall require the person in charge of the means of transport to take any action which the competent authority considers necessary in order to safeguard the welfare of the animals concerned.

Depending on the circumstances of each case, such action may include:

- (a) arranging for the journey to be completed or the animals to be returned to their place of departure by the most direct route, provided that this course of action would not cause unnecessary suffering to the animals;

- (b) arranging for the animals to be held in suitable accommodation with appropriate care until the problem is resolved;

- (c) arranging for the humane slaughter of the animals. The destination and use of the carcasses of these animals shall be governed by the provisions laid down in Directive 64/433/EEC.'

7 Article 18(2) of Directive 91/628 provides:

'In the case of repeated infringements of this Directive or an infringement which involves serious suffering for the animals, a Member State shall, without prejudice to any other penalties provided for, take the measures necessary to remedy the shortcomings noted, up to and including suspension or even withdrawal of the authorisation referred to in Article 5A(1)(a)(ii).

Member States shall, when they transpose provisions into their national legislation, provide for the measures which they will take to remedy the shortcomings noted.'

- 8 Point 48 of the Annex to Directive 91/628, headed ‘Watering and feeding intervals, journey times and resting periods, includes a point 7(b), which provides:

‘In the case of transport by sea on a regular and direct link between two geographical points of the Community by means of vehicles loaded on to vessels without unloading of the animals, the latter must be rested for 12 hours after unloading at the port of destination or in its immediate vicinity unless the journey time at sea is such that the voyage can be included in the general scheme of points 2 to 4 [of point 48].’

Directive 93/119

- 9 Article 3 of Directive 93/119 provides:

‘Animals shall be spared any avoidable excitement, pain or suffering during movement, lairaging, restraint, stunning, slaughter or killing.’

- 10 Article 5(1)(d) of Directive 93/119 provides:

‘Solipeds, ruminants, pigs, rabbits and poultry brought into slaughterhouses for slaughter shall be:

...

(d) bled in accordance with the provisions of Annex D.’

11 Article 6(1) of Directive 93/119 provides:

‘Instruments, restraint and other equipment and installations used for stunning or killing must be designed, constructed, maintained and used in such a way as to achieve rapid and effective stunning or killing in accordance with the provisions of this Directive. The competent authority shall check that the instruments, restraint and other equipment used for stunning or killing comply with the above principles and shall check regularly to ensure that they are in a good state of repair and will allow the aforementioned objective to be attained.’

12 Article 8 of Directive 93/119 provides:

‘Inspections and controls in slaughterhouses shall be carried out under the responsibility of the competent authority, which shall at all times have free access to all parts of slaughterhouses in order to ascertain compliance with this Directive. However, such inspections and controls may be carried out at the same time as controls carried out for other purposes.’

The pre-litigation procedure

- 13 The Food and Veterinary Office of the ‘Health and Consumer Protection’ Directorate-General of the Commission (‘the FVO’) has since 1998 carried out inspections in Greece to monitor whether the Community provisions on the protection of animals, in particular during transport and at the time of slaughter, have been implemented effectively.
- 14 In the course of a number of those inspections carried out in the period 1998-2006, the FVO found that those Community provisions had not been complied with. The Commission bases its argument, *inter alia*, on inspection Nos 8729/2002 of 18 to 20 November 2002, 9002/2003 of 13 to 17 January 2003, 9176/2003 of 21 to 25 July 2003, 9211/2003 of 15 to 19 September 2003 and 7273/2004 of 4 to 8 October 2004.
- 15 On 13 July 2005, the Commission sent a letter of formal notice to the Hellenic Republic concerning the inadequate application and implementation of a number of provisions of Directives 91/628 and 93/119 and of Article 10 EC, to which that Member State replied by letter of 20 September 2005.
- 16 Following a number of exchanges of information and after having carried out, from 21 February to 1 March 2006, inspection No 8042/2006, the Commission issued a reasoned opinion requesting the Hellenic Republic to take the measures necessary to comply with that opinion within two months of its receipt. That Member State replied on 8 September 2006.
- 17 The FVO carried out inspection No 8176/2006 from 4 to 15 September 2006 to verify whether the Community provisions relating to animal welfare had been complied with and its report confirmed the infringements and insufficiencies which had previously been found to exist in that area.

18 Accordingly, the Commission decided to bring the present action.

The action

Admissibility

Arguments of the parties

19 The Hellenic Republic disputes the overall approach used by the Commission in its action. It submits that that action, which is imprecise in its entirety, should be declared inadmissible.

20 Generally, it submits that the Commission does not put forward precise facts and does not provide evidence which makes it possible to determine, in respect of each alleged failure to fulfil obligations, the situation which existed at the time when the period set out in the reasoned opinion expired. According to that Member State, for it to be possible to undertake a judicial assessment of the facts at issue in compliance with the rights of the defence, the Commission should have referred to a reasonable number of specific facts which, on account of their nature, would be capable of establishing, first, the alleged infringement of Community law and, secondly, that that infringement persisted, at least until the period fixed in the reasoned opinion had expired.

21 By contrast, the Commission submits that it is permissible for it to deal with the issue of compliance with the Community legislation relating to the protection of animals during transport and at the time of slaughter in an overall manner in a single procedure. There is nothing to preclude it from relying on a number of grounds based not on an isolated finding of fact but on a significant number of instances detected by the FVO

which brought to light a structural and general infringement of the Hellenic Republic's obligations concerning the protection of animals during transport and at the time of slaughter.

- 22 In the Commission's opinion, the action for a declaration that the Hellenic Republic has failed to fulfil its obligations under the provisions of Directives 93/119 and 91/628 and, as of 5 January 2007, that is to say, since the expiry of the period fixed in the reasoned opinion, the provisions of Regulation No 1/2005 is therefore admissible.

Findings of the Court

- 23 As regards the overall approach taken by the Commission, it must be pointed out, first of all, that, without prejudice to the Commission's obligation to discharge the burden of proof borne by that institution in proceedings under Article 226 EC, the EC Treaty does not contain any rule which precludes the overall treatment of a significant number of situations on the basis of which the Commission considers that a Member State has, repeatedly and over a long period, failed to fulfil its obligations under Community law (Case C-135/05 *Commission v Italy* [2007] ECR I-3475, paragraph 20).
- 24 Secondly, it must be stated that it is settled case-law that, even if the applicable national legislation itself complies with Community law, a failure to fulfil obligations may arise due to the existence of an administrative practice which infringes Community law when it is, to some degree, of a consistent and general nature (see, inter alia, Case C-278/03 *Commission v Italy* [2005] ECR I-3747, paragraph 13, and C-135/05 *Commission v Italy*, paragraph 21).

- 25 Lastly, it must be borne in mind that the Court has previously regarded actions brought by the Commission in similar circumstances as admissible, inter alia in the case which gave rise to the judgment of 6 October 2005 in Case C-502/03 *Commission v Greece*, where the Commission relied specifically on a structural and general infringement by that Member State of Articles 4, 8 and 9 of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32), or in the case which gave rise to the judgment in Case C-423/05 *Commission v France* [2007], where infringement of those same Articles and of Article 14 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1) was also relied on. There is nothing to prevent that approach from being transposed to the area of animal protection.
- 26 Consequently, the overall approach taken by the Commission in its action is admissible.
- 27 As regards the admissibility of the grounds of action relating to the provisions of Regulation No 1/2005 having repealed and replaced Directive 91/628 as of 5 January 2007, that is to say, after the expiry of the period set out in the reasoned opinion, it must be pointed out that, according to settled case-law, the existence of an infringement in proceedings brought under Article 226 EC must be assessed in the light of the Community legislation in force at the close of the period prescribed by the Commission for the Member State concerned in order to comply with its reasoned opinion (see, inter alia, Case C-61/94 *Commission v Germany* [1996] ECR I-3989, paragraph 42, and Case C-377/03 *Commission v Belgium* [2006] ECR I-9733, paragraph 33).
- 28 However, as the Court has already held and as the Advocate General pointed out in point 35 of her Opinion, although the claims as stated in the application cannot as a rule be extended beyond the infringements alleged in the operative part of the reasoned opinion and in the letter of formal notice, the fact nevertheless remains that the Commission has standing to seek a declaration that a Member State has failed to fulfil obligations which were created in the original version of a Community measure, subsequently amended or repealed, and which were maintained in force under the provisions of a new Community measure (see, in that regard, Case C-365/97 *Commission v Italy* [1999] ECR I-7773, paragraph 36, and Case C-363/00 *Commission v Italy* [2003] ECR I-5767, paragraph 22). Conversely, the subject-matter of the dispute cannot be extended to obligations arising under new provisions which do not correspond to those arising under the original version of the measure concerned, for

otherwise it would constitute a breach of the essential procedural requirements of infringement proceedings (see, inter alia, Case C-363/00 *Commission v Italy*, paragraph 22).

29 Consequently, the claims in the Commission's application for a declaration that the Hellenic Republic has failed to fulfil its obligations under the provisions of Regulation No 1/2005 are, in principle, admissible provided that the obligations under Regulation No 1/2005 are similar to those arising under Directive 91/628.

30 However, it must be pointed out that the Commission has stated, in answer to a question asked during the hearing, that the present action for failure to fulfil obligations must be interpreted as meaning that it refers in actual fact only to the provisions of Directive 91/628 and not those of Regulation No 1/2005 which were relied on with the aim of showing that the practice on the part of the Greek authorities was to a certain extent constant.

31 In those circumstances, the Court's assessment must be limited to the merits of the complaints relating to the provisions of Directive 91/628.

The complaints raised by the Commission

32 First of all, it is to be remembered that in proceedings under Article 226 EC for failure to fulfil obligations it is incumbent upon the Commission to prove the alleged failure. It is the Commission's responsibility to place before the Court the information needed to enable the Court to establish that the obligation has not been fulfilled, and in so doing

the Commission may not rely on any presumption (see, to that effect, Case 96/81 *Commission v Netherlands* [1982] ECR 1791, paragraph 6, and Case C-135/05 *Commission v Italy*, paragraph 26).

33 Where the Commission has adduced sufficient evidence to prove the relevant facts which occurred in the territory of the defendant Member State, it is incumbent on the latter to challenge in substance and in detail the information produced and the consequences flowing therefrom (see, to that effect, Case 272/86 *Commission v Greece* [1988] ECR 4875, paragraph 21, and Case C-365/97 *Commission v Italy*, paragraphs 84 and 86).

34 In the present case, the Commission bases its arguments on the findings made during inspections Nos 8729/2002, 9002/2003, 9176/2003, 9211/2003, 7273/2004, 8042/2006 and 8167/2006 to prove the merits of its action.

35 Accordingly, it must be ascertained, for each complaint, whether those findings are, in accordance with the case-law cited in paragraph 32 of this judgment, such as to prove that there was a failure to fulfil the obligations arising under Community law.

The complaint relating to infringement of Article 5(A)(1)(a)(i) and (ii) of Directive 91/628

— Arguments of the parties

36 On the basis of the findings made by the FVO during inspections Nos 7273/2004 and 8042/2006, the Commission submits that the Hellenic Republic failed to take the measures necessary so that any transporter of animals was covered by an authorisation from the competent authority and was registered in a manner enabling that authority to

identify him rapidly in the event of failure to comply with the requirements for the protection of animals during transport.

37 The Commission states that in the course of inspection No 723/2004, the FVO inspectors found that certain transporters did not have an authorisation or that the authorisation which had been issued to them was no longer valid. Furthermore, it is apparent from inspection No 8042/2006 that, notwithstanding certain improvements, the rules relating to authorisations and the identification of transporters had not been adequately complied with. The Commission states that although there are lists of transporters they have not always been updated. Furthermore, it adds that the lists of transporters are incomplete on the ground that they do not contain information relating to the loading surface.

38 The Hellenic Republic submits, in essence, that the fact that an invalid authorisation was identified during inspection No 7273/2004, which constitutes an isolated case, cannot serve as a basis for an assessment relating to the inadequacy of the system as such, particularly since that authorisation had already been identified previously by the competent national authority.

39 Furthermore, that Member State maintains that Directive 91/628 does not provide that the registers of transporters must include information relating to their written undertaking to comply with the requirements of that directive or as regards the place of loading of the animals. On that point the Commission submits that the wording of Article 5(A)(1)(a)(i) and (ii) of Directive 91/628 disproves that argument.

40 The Hellenic Republic also states that it has taken measures in order to ensure that the Community legislation was complied with. It submits that the fact, inter alia, that the regional authorities were informed of the recommendations of the Community inspectors and of the organisation of training seminars designed for drivers and animal

attendants and also for veterinarians must be interpreted as a positive element, which shows that the Greek authorities continuously strive to apply Community legislation properly.

41 The Commission, however, contends that, although the organisation of such seminars constitutes a positive measure, the fact remains that that cannot replace official checks by the national authorities in accordance with Community legislation.

— Findings of the Court

42 As regards the argument that the lists of transporters are incomplete on the ground that they do not contain information relating to the loading surface, it is sufficient to point out that it is not apparent from the wording of Article 5(A)(1)(a) of Directive 91/628 that such information may be required.

43 Therefore that argument cannot be accepted.

44 The argument that the lists of transporters are not always updated is clearly not consonant, on account of its vague nature, with the case-law referred to in paragraph 32 of this judgment, according to which it is incumbent upon the Commission to prove the alleged failure and to place before the Court the information needed to enable the Court to establish that the obligation has not been fulfilled.

45 In the absence of information, in particular on the number of lists concerned or on the total number of lists checked, the mere fact that certain lists of transporters are not updated is not sufficient to show that the Hellenic Republic has failed to fulfil its obligations under Article 5(A)(1)(a) of Directive 91/628.

46 In any event, as the Advocate General points out in point 54 of her Opinion, it seems inconceivable to be able to state that the Greek authorities have developed an administrative practice which is, to some degree, of a consistent and general nature since the evidence relied upon by the Commission in support of that complaint relates to findings made in the course of 2006 and not to a longer period in the course of which such a practice could have developed.

47 As regards the argument that certain transporters did not have an authorisation or that the authorisation which had been issued to them was no longer valid, it must be stated that that argument cannot be accepted because it too is not consonant with the case-law referred to in paragraph 32 of this judgment.

48 The Commission does not give any information in particular as regards the number of transporters who did not have an authorisation or whose authorisation had expired or as regards the number of transporters who were subject to checks.

49 It follows that the Commission's argument is not such as to show the existence of an administrative practice which is, to some degree, of a consistent and general nature and is contrary to the obligations incumbent upon the Hellenic Republic under Article 5(A)(1)(a) of Directive 91/628.

50 In the light of the foregoing, the complaint relating to infringement of Article 5(A)(1)(a)(i) and (ii) of Directive 91/628 must be held to be unfounded.

The complaint relating to infringement of Article 5(A)(2)(b), the first indent of Article 5(A)(2)(d)(i), points (b) and (d) of the first paragraph of Article 8 and Article 9 of Directive 91/628

— Arguments of the parties

- 51 The Commission complains that the Hellenic Republic failed to take the measures necessary so that the competent authorities could carry out obligatory checks of the route plan and consequently failed to fulfil its obligations under Article 5(A)(2)(b), the first indent of Article 5(A)(2)(d)(i), points (b) and (d) of the first paragraph of Article 8 and Article 9 of Directive 91/628.
- 52 The Commission states that, during inspections Nos 9002/2003 and 7273/2004, the FVO inspectors found inadequacies as regards certain route plans, which had not been detected by the competent Greek authority. In particular, the journey times stated in most of the route plans which were checked and accompanied animals intended for slaughter, which were transported from other Member States, were inconsistent and not feasible.
- 53 The Hellenic Republic however submits that a circular of 2003 ('the circular of 2003') resulted in the introduction of an appropriate system for the inspection and checking of the information contained in route plans. Furthermore, it maintains that, where those plans are drawn up by the competent authorities of other Member States, it is not for the competent authorities of the country of destination to assess the validity of the data contained in those plans and of the criteria taken into account by the authority which authorised those plans. The Hellenic Republic maintains that only compliance with those plans is capable of being checked.
- 54 The Commission contends that, contrary to what that Member State maintains, the purpose of checks of route plans as accompanying documents is to comply with the

requirements of Directive 91/628. Consequently, it is necessary to check not only whether there is a route plan or the information which it contains, but also the legality of the transport in relation to the rules on animal welfare.

55 The Commission states that that argument is *inter alia* borne out by Article 9(1) of Directive 91/628 which provides for the measures to be taken where it is found during the transport of animals that there has been a failure to comply with the requirements of that directive. According to the Commission, it is therefore clear that mere verification of the information in the route plans does not constitute a check in compliance with the requirements of Directive 91/628.

56 The Commission maintains that the Hellenic Republic's argument relating to the system introduced by the circular of 2003 is contradicted by a significant number of on-the-spot findings made by the FVO inspectors from which it is apparent that the checks were not carried out in a satisfactory manner.

— Findings of the Court

57 This complaint divides into three parts.

58 As regards the part of the complaint relating to infringement of Article 5(A)(2)(b) of Directive 91/628, which requires that Member States must ensure that transporters draw up a route plan, it is not apparent from the file submitted to the Court that the Commission adduced evidence to prove that the transporters had not drawn up a route plan as they are obliged to do under Article 5(A)(2)(b) of Directive 91/628.

- 59 As the Commission has not placed before the Court, in accordance with the case-law cited in paragraph 32 of this judgment, the information needed to enable the Court to establish that the obligation has not been fulfilled in that regard, that part of the complaint must be rejected.
- 60 As regards the part of the complaint relating to infringement of the first indent of Article 5(A)(2)(d)(i) and points (b) and (d) of the first paragraph of Article 8 of Directive 91/628, it must be borne in mind, first, that it is apparent from the first indent of Article 5(A)(2)(d)(i) that Member States are under an obligation to ensure that the route plans of transporters contain all the particulars referred to in chapter VIII of the Annex to Directive 91/628 and that those particulars are correct and appropriate. It must be pointed out, secondly, that it is apparent from points (b) and (d) of the first paragraph of Article 8 of Directive 91/628 that Member States are under an obligation to inspect means of transport and animals arriving at their place of destination and to inspect the particulars on the accompanying documents.
- 61 In the present case, the evidence put forward by the Commission indicates, inter alia, that the documentation which accompanied the animals during transport within the territory of the Hellenic Republic did not include the time of departure and that the FVO inspectors detected irregularities in documents which the competent national authorities had already checked. The Commission stated, in that regard, that copies of health certificates and route plans which accompanied animals coming from Spain, France and the Netherlands intended for slaughter in the Hellenic Republic were inconsistent and that important information was missing. Furthermore, according to the findings made by the FVO, the journey times stated in most of the route plans were inconsistent and not feasible. By way of example, the Commission cited the case of a route plan in which the intermediate rest period, between a point in the south of Italy and the place of destination, was not stated.
- 62 Furthermore, it is apparent in particular from the report of inspection No 8042/2006 that, in the prefecture of Kilikis, the competent national authority stated that it had not carried out any checks of route plans and that, in the prefecture of Thesprotia, the competent local authorities retained the original route plans instead of giving them back to the transporters who had to return them to the competent authority of the place of origin. Furthermore, in Patras, the competent national authorities checked the route plans only as far as the port and not in respect of the journey which remained to be made

to the final destination, with the result that the competent national authorities did not discover that the duration of the voyage during many transports to the islands of Lesbos and Chios was longer than the duration allowed.

- 63 It is apparent from all the information provided by the Commission that, despite the setting up of a system for checking route plans following the circular of 2003, checks were not carried out in all the prefectures. The competent authorities could not therefore carry out the mandatory inspections of means of transport referred to in points (b) and (d) of the first paragraph of Article 8 of Directive 91/628. Furthermore, when checks were made, it is apparent from that information that, on many occasions, substantial irregularities as regards the route plans were not always identified by the competent authorities.
- 64 It must therefore be held that the evidence relating to 2003 and 2006 submitted by the Commission in support of its complaints shows, in accordance with the case-law cited in paragraph 32 of this judgment, that the Hellenic Republic failed to take the measures necessary to comply with the obligations incumbent on it under the first indent of Article 5(A)(2)(d)(i) and points (b) and (d) of the first paragraph of Article 8 of Directive 91/628.
- 65 That finding cannot be called in question by the Hellenic Republic's argument that, if the competent authorities of other Member States have drawn up route plans, the competent Greek authorities can monitor only the implementation of those plans and not the information in them.
- 66 As the Commission has correctly pointed out, the checks of the route plans are intended to ensure that the requirements laid down by Directive 91/628 are complied with. Therefore, the check cannot be restricted to checking that a route plan exists or checking the information in that plan, but must also include an examination of whether the animal transport complies with Community legislation on the protection of animals during transport.

67 In those circumstances, a mere check of the data in the route plans is not sufficient to satisfy the obligations laid down by Directive 91/628.

68 It follows from the foregoing that the part of the complaint relating to infringement of the first indent of Article 5(A)(2)(d)(i) and points (b) and (d) of the first paragraph of Article 8 of Directive 91/628 is well founded.

69 As regards the part of the complaint relating to infringement of Article 9 of Directive 91/628 which requires Member States to take any action considered necessary to safeguard the welfare of the animals in the case of irregularities, it must be pointed out that the Commission did not produce any evidence to show that the competent authorities had not acted in an appropriate manner when it found that the provisions of Directive 91/628 had not been complied with.

70 That part of the complaint cannot, therefore, be upheld.

The complaint relating to infringement of point 48.7(b) of Chapter VII of the Annex to Directive 91/628

— Arguments of the parties

71 The Commission complains that the Hellenic Republic did not provide facilities in or in the immediate vicinity of Greek ferry ports to enable animals to be rested for 12 hours after being unloaded from boats, where the journey time at sea exceeded 29 hours.

72 The Commission states in particular that, in the port of Igoumenitsa, facilities were found to exist, but could not be used since there was no authorisation from the competent authorities.

73 The Hellenic Republic maintains, first, that the Commission did not mention any specific case in which the journey time exceeded 29 hours. Secondly, it submits point 48.7(b) of the Annex to Directive 91/628 does not require Member States to provide facilities or appropriate staging points to enable animals to be rested for 12 hours as that obligation is incumbent only on transporters. Lastly, that Member State takes the view that there was, in any event, no obligation to provide such facilities since there is no transport by sea between a Greek ferry port and the ferry port of another Member State with a journey time in excess of 29 hours. It states, in that regard, that the duration of the crossing between Bari (Italy) and Igoumenitsa, which is the main Greek port of transit, does not exceed 10 or 11 hours and that the duration of the crossing between Bari and Patras does not exceed 15 hours.

74 The Commission, however, disputes all of those arguments. First, it maintains that it is apparent from the wording of point 7(b) that Member States are obliged to provide facilities for animals. Secondly, it submits that the argument put forward by the Hellenic Republic that there is no transport between a Greek ferry port and the ferry port of another Member State with a journey time in excess of 29 hours does not correspond to reality.

— Findings of the Court

75 It must be borne in mind that, under point 48.7(b) of Chapter VII of the Annex to Directive 91/628, in the case of transport by sea on a regular and direct link between two geographical points of the Community by means of vehicles loaded on to vessels

without unloading of the animals, the latter must, as a rule, be rested for 12 hours after unloading at the port of destination or in its immediate vicinity (see, in that regard, Case C-277/06 *Interboves* [2008] ECR I-7433, paragraph 27).

- 76 Although that provision does not expressly provide that Member States are obliged to ensure that there are rest facilities for animals in ports, such an obligation forms an integral part of the requirement that animals must be rested for 12 hours after unloading at the port of destination or in its immediate vicinity. Transporters would be unable to comply with a rest period of 12 hours if Member States did not ensure that facilities were available for that purpose.
- 77 It must therefore be found that the Hellenic Republic is under an obligation to provide such facilities in Greek ports or in their immediate vicinity.
- 78 In the present case, it is not disputed that, at the end of the period laid down in the reasoned opinion, there were no rest facilities for animals in the majority of Greek ports.
- 79 It must, therefore, be held that, by failing to take all the appropriate measures to provide, in ferry ports or in their immediate vicinity, for installations to enable animals to be rested after unloading, the Hellenic Republic has failed to fulfil its obligations under point 48.7(b) of Chapter VII of the Annex to Directive 91/628.
- 80 That finding cannot be called in question by the argument relied on by the Hellenic Republic that there was no obligation to provide such facilities since there is no transport by sea between a Greek ferry port and the ferry port of another Member State with a journey time in excess of 29 hours.

- 81 In that regard, it must be borne in mind that, in *Interboves*, the Court stated that the ‘14+1+14’ rule in point 48.4(d) of the Annex to Directive 91/628 must be understood as authorising a maximum period of travel of 28 hours, interrupted by a minimum rest period of one hour. It is therefore that period of 28 hours that must be taken into consideration.
- 82 Even though the duration of the crossing between Bari and the main Greek port of transit does not exceed 10 or 11 hours, it is conceivable animals may be transported from other Community ports, the consequence of which is a longer journey time at sea. Furthermore, as the Advocate General pointed out in points 97 and 98 of her Opinion, in the specific cases provided for by Directive 91/628, rest periods for animals may be required even if the journey time at sea is less than 28 hours.
- 83 Having regard to the foregoing it must be held that the complaint alleging infringement of point 48.7(b) of Chapter VII of the Annex to Directive 91/628 is well founded.

The complaint alleging infringement of Article 8 of Directive 91/628

— Arguments of the parties

- 84 The Commission maintains that it is apparent from the reports of inspections Nos 9211/2003, 7273/2004 and 8042/2006 that the Hellenic Republic has failed to take measures so as to ensure that the inspections of the means of transport and animals are adequately carried out in Greece in order to prevent unlawful transports of animals by road.

- 85 It states, in particular, that certain Greek prefectures, including those of Achaëa, Kilkis and Serres, do not provide for the carrying out of such inspections, either because they lack the staff or because the checks have already been carried out in the Greek ports. Furthermore, it is apparent from the report of inspection No 9211/2003 that, in Greek prefectures, the inspection is carried out only in the ports and at the crossing point and not at any other time during transport. Furthermore, the Commission states that the pilot programme providing for more inspections, which was already mentioned by the Hellenic Republic at the state of the pre-litigation procedure, does not include certain prefectures, including that of Thessaly, although there were found to be shortcomings there during inspection No 9211/2003.
- 86 The Hellenic Republic maintains that Article 8 of Directive 91/628 must be interpreted as meaning that, for there to be an infringement of that provision, it has to be proved that there is a total absence of checks relating to the protection of animals during transport.
- 87 In any event, that Member State considers that the implementation of a pilot programme providing for inspections carried out by mixed teams in certain prefectures, the imposition of penalties on transporters and the introduction of various procedures for mutual assistance with certain Member States is further evidence that the Greek authorities carry out the checks required by Community legislation.
- 88 The Commission contends that, in order to comply with the Community requirements, the inspection of the means of transport and animals must be appropriate, sufficient and effective. It is of the opinion that the route plan checks carried out by the Greek authorities were not effective and appropriate to prevent the unlawful transport of animals by road.

— Findings of the Court

- 89 It must be borne in mind that, under point (a) of the first paragraph of Article 8 of Directive 91/628, Member States must ensure that the competent authorities check that the requirements of that directive have been complied with, by carrying out non-discriminatory inspections of means of transport and animals during transport by road. The second paragraph of that provision states that such inspections must be carried out on an adequate sample of the animals transported each year within each Member State.
- 90 In that regard, it must be stated that it is apparent from the evidence adduced by the Commission, relating to 2003 to 2006, that, first, a number of prefectures did not provide for inspections of means of transport and that, secondly, when such inspections were carried out they were carried out only in ports and at frontiers and not on the road as required by Article 8 of Directive 91/628.
- 91 Therefore, it must be held that, by failing to take all the measures necessary to ensure that inspections of means of transport and animals during transport by road are carried out, the Hellenic Republic has failed to fulfil its obligations under Article 8 of Directive 91/628.
- 92 That finding cannot be called in question by the Hellenic Republic's argument that the implementation of a pilot programme providing for inspections carried out by mixed teams in certain prefectures, the imposition of penalties on transporters and the introduction of various procedures for mutual assistance with certain Member States prove that the Greek authorities carry out the checks required by Community legislation.
- 93 It is clear that the actual existence of such a programme did not make it possible to ensure that the necessary checks were carried out.

⁹⁴ It follows from the foregoing that the complaint alleging infringement of point (a) of the first paragraph of Article 8 of Directive 91/628 is well founded.

The complaint alleging infringement of Article 18(2) of Directive 91/628

— Arguments of the parties

⁹⁵ The Commission complains, on the basis of inspections Nos 9002/2003 and 9211/2003, that the Hellenic Republic failed to take the appropriate measures to ensure that effective, proportionate and dissuasive penalties were imposed in the event of repeated or serious infringements of the provisions relating to the protection of animals during transport.

⁹⁶ However, the Hellenic Republic maintains that the Commission has not put forward any specific fact to substantiate its complaints. In any event, it submits that the competent authorities impose effective, proportionate and dissuasive penalties as is proved by the list of decisions imposing administrative fines referred to in paragraph 18 of its defence.

— Findings of the Court

⁹⁷ It must be pointed out that Article 18(2) of Directive 91/628 obliges Member States to take, in the case of repeated infringements of that directive or an infringement which involves serious suffering for the animals, the measures necessary to remedy the shortcomings noted.

98 The Commission seeks to show that the scheme established by the Hellenic Republic is ineffective by pointing out that the basic checks are poor, the number of written warnings is low and the procedures for enforcing penalties are problematic. The FVO's report of inspection No 9211/2003 indicates *inter alia* that, in 2002, nine oral warnings, 16 written warnings and one administrative fine were given in respect of a total of 26 infringements. Furthermore, there was no suspension or withdrawal of an authorisation in 2001 and 2002. That report also states that four fines in the amount of EUR 3 000 were suggested as penalties for infringements committed in a prefecture, but that they were not imposed.

99 However, as the Advocate General rightly pointed out in point 141 of her Opinion, the findings in those reports, by virtue of their imprecise and general nature, are not of such a kind as to prove that the Hellenic Republic has failed to fulfil its obligation under Article 18(2) of Directive 91/628.

100 The Commission has not submitted any information as regards the repetition of infringements or the severity of the suffering endured by the animals during such infringements. In the absence of such information it cannot be held that there has been failure to fulfil the obligations under Article 18(2) of Directive 91/628.

101 In those circumstances, the complaint alleging infringement of Article 18(2) of Directive 91/628 must be rejected.

The complaint alleging infringement of Articles 3, 5(1)(d) and 6(1) of Directive 93/119

— Arguments of the parties

- 102 The Commission alleges that the Hellenic Republic failed to take the appropriate measures to ensure that the rules on the stunning of animals at the time of slaughter were complied with.
- 103 The Commission states that, during inspections Nos 9002/2003 and 7273/2004, the FVO found that, in some slaughterhouses visited, the stunning of pigs and sheep was insufficiently monitored and that it was, consequently, possible that not all the animals had been stunned effectively, in contravention of Directive 93/119. It was also found that, in contravention of paragraph 1 of Annex D to that directive, the intervals between stunning and bleeding were too long with the result that the animals could have regained consciousness whilst bleeding was being carried out.
- 104 Furthermore, the Commission maintains that, during inspection No 8042/2006, the FVO again found inadequacies as regards the stunning of animals. In particular, the FVO inspectors found that the equipment for stunning lacked maintenance and functioned badly, that there was a no appropriate support and that there were excessive intervals between stunning and bleeding.
- 105 The Hellenic Republic once again takes the view that the Commission bases its findings on mere doubts and probabilities without referring to specific cases.

106 That Member State submits that, on any view, the gaps found are minimal and relate to isolated cases in respect of which penalties were imposed. Furthermore, it maintains that the existence of ongoing training and the transmission of information intended for, inter alia, veterinary surgeons makes it possible to fill such gaps.

107 In its reply the Commission states, in essence, that, contrary to the view the Hellenic Republic seems to take, the point is not whether the Commission was able to determine that the animals were completely anaesthetised in the slaughterhouses which were checked. The issue is, by contrast, whether the equipment necessary for stunning and killing is used rapidly and effectively so that the animals' suffering might be avoided in accordance with the provisions of Article 6(1) of Directive 93/119.

— Findings of the Court

108 It must be borne in mind that Articles 3, 5(1)(d) and 6(1) of Directive 93/119 seek to limit the excitement, pain or suffering of animals intended for human use. In particular, Article 3 of that directive requires that animals must be spared avoidable suffering before and during slaughter. Directive 93/119 also provides, in Articles 5(1)(d) and 6(1) respectively, that they must be bled rapidly and effectively and that the facilities for stunning and killing them must be well maintained and used effectively.

109 In the present case, the evidence adduced by the Commission and set out in points 153 to 155 of the Advocate General's Opinion shows, inter alia, that, although in three slaughterhouses visited by FVO inspectors during inspection No 9002/2003 the equipment for stunning the animals and the maintenance of that equipment complied, in the main, with the Community provisions, it was found that, in one of those slaughterhouses, the pigs had not been effectively stunned with the equipment which produces electric shocks. Other problems also came to light during the stunning of the animals. In one of the slaughterhouses, the tethering, stunning and bleeding of three

cows lasted for an hour. Furthermore, the interval of time between the stunning and the slaughtering of two cattle was 120 seconds, which allowed the animals to regain consciousness. Likewise, during the slaughtering of sheep, the interval between stunning and slaughtering was so long (37 seconds) that the animals were able to regain consciousness.

- 110 Furthermore, it is apparent from the report of inspection No 7273/2004 that, in a slaughterhouse in the prefecture of Fthiotida, there was no equipment for the watering of animals in the temporary lairaging facilities and that, furthermore, the ground was not flat. In another slaughterhouse which was inspected, there was no current to stun the animals electrically. In the prefecture of Trikala, the stunning of pigs in a slaughterhouse which was visited by the FVO inspectors was ineffective and the interval between stunning and slaughtering was too long. It was also found that the stunning of cattle was ineffective and that spare equipment for stunning had not been made available.
- 111 It follows from all the information above that various irregularities were found in slaughterhouses situated in a number of prefectures in the Hellenic Republic. Those irregularities relate, first, to the procedure for stunning animals, secondly, to the obligation to bleed them rapidly and effectively and, lastly, to the obligation to ensure that the facilities for stunning and killing are well maintained and effectively used.
- 112 It must therefore be concluded that the evidence submitted by the Commission, relating to 2003 to 2006, shows, in accordance with the case-law referred to in paragraph 32 of this judgment, that the Hellenic Republic has failed to take the measures necessary to comply with its obligations under Articles 3, 5(1)(d) and 6(1) of Directive 93/119.
- 113 That finding cannot be called in question by the argument put forward by the Hellenic Republic that the Commission has not referred to any specific case of animals in respect

of which there was an infringement of Community legislation or by the argument that that Member State remedied the irregularities relied on by the Commission by organising training seminars for veterinary surgeons.

114 It must be pointed out that, as the Commission has stated, the issue is not whether that institution was able to determine that the animals were completely anaesthetised in the slaughterhouses which were checked and whether it was able to refer to specific cases showing that they were not. The Commission's task is to establish whether the equipment necessary for stunning and killing is used rapidly and effectively in order to limit the animals' suffering in accordance with the provisions of Article 6(1) of Directive 93/119. Furthermore, it must be pointed out that, although the organisation of training seminars for veterinary surgeons constitutes a positive measure, the fact remains that that measure alone cannot ensure compliance with the Community legislation on the protection of animals at the time of slaughter.

115 In the light of the foregoing, the complaint alleging infringement of Articles 3, 5(1)(d) and 6(1) of Directive 93/119 must be held to be well founded.

The complaint alleging infringement of Article 8 of Directive 93/119

— Arguments of the parties

116 The Commission maintains, on the basis of inspections during which significant irregularities in slaughterhouses were found, that the Hellenic Republic has failed to take the measures necessary to ensure that inspections and controls in slaughterhouses are carried out in an appropriate manner.

- 117 It alleges, in particular, that that Member State has not fully implemented the plan of action which it had announced. That plan provided for a further inspection before the end of 2001 of all slaughterhouses located in Greek prefectures. Furthermore, it maintains that the Greek authorities did not sufficiently cooperate with the FVO inspectors on the ground that certain slaughterhouses, which were to be inspected, were inaccessible on account of strikes announced just one day before the inspection.
- 118 In its defence, the Hellenic Republic maintains that it is difficult for it to ascertain with any certainty the alleged failure to fulfil obligations.
- 119 In any event, it submits that it cannot be alleged that it failed to fulfil its obligations under Article 8 of Directive 93/119 since the appropriate controls are carried out by competent veterinary surgeons, training seminars are organised and all the slaughterhouses are reassessed.

— Findings of the Court

- 120 Under Article 8 of Directive 93/119, inspections and controls in slaughterhouses must be carried out on the responsibility of the competent authority, which is at all times to have free access to all parts of slaughterhouses in order to ascertain compliance with that directive.
- 121 It must be pointed out that, although the Hellenic Republic maintains that the competent authorities carried out the required controls, it does not dispute the fact that the plan of action providing for a further inspection of all Greek slaughterhouses before the end of 2001 had not been fully implemented by the date fixed. Nor does it dispute the fact that the different deadlines given to the competent authorities to carry out the inspections and produce the results of those inspections were continuously extended and that the deadline was finally set at 30 July 2005. Moreover, it is apparent from

inspection No 7273/2004 that the Ministry of Rural Development and Food stated that the competent authorities had inspected the slaughterhouses in only 38 of the 54 prefectures.

¹²² The Hellenic Republic therefore clearly failed to adopt the measures necessary to ensure that inspections and controls in slaughterhouses were carried out in an appropriate manner as they were obliged to do under Article 8 of Directive 93/119.

¹²³ It follows that the complaint alleging infringement of Article 8 of Directive 93/119 is well founded.

¹²⁴ In view of the foregoing considerations, it must be held that by failing to take the measures necessary:

- to ensure that the competent authorities carry out obligatory checks of route plans;

- to provide for facilities in or in the immediate vicinity of ferry ports to enable animals to rest after unloading;

- so as to ensure that the inspections of the means of transport and the animals are actually carried out;

- to ensure that the rules on the stunning of animals at the time of slaughter are complied with, and

- to ensure that inspections and controls in slaughterhouses are carried out in an appropriate manner,

the Hellenic Republic has failed to fulfil its obligations under the first indent of Article 5(A)(2)(d)(i) and Article 8 of Directive 91/628, point 48.7(b) of Chapter VII of the Annex to that directive and Articles 3, 5(1)(d), 6(1) and 8 of Directive 93/119.

Costs

¹²⁵ Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Under Article 69(3) of those rules, where each of the parties succeeds on some and fails on other heads, the Court may order that the costs be shared or that the parties bear their own costs.

¹²⁶ In the present case, the Hellenic Republic must be ordered to pay two thirds of the costs and the Commission must be ordered to pay one third of the costs.

On those grounds, the Court (Third Chamber) hereby:

1. Declares that by failing to take the measures necessary:

- **to ensure that the competent authorities carry out obligatory checks of route plans;**

- **to provide for facilities in or in the immediate vicinity of ferry ports to enable animals to rest after unloading;**

- **so as to ensure that the inspections of the means of transport and the animals are actually carried out;**

- **to ensure that the rules on the stunning of animals at the time of slaughter are complied with, and**

- **to ensure that inspections and controls in slaughterhouses are carried out in an appropriate manner,**

the Hellenic Republic has failed to fulfil its obligations under the first indent of Article 5(A)(2)(d)(i) and Article 8 of Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and

amending Directives 90/425/EEC and 91/496/EEC, as amended by Council Regulation (EC) No 806/2003 of 14 April 2003, point 48.7(b) of Chapter VII of the Annex to that directive, as amended by Regulation No 806/2003, and Articles 3, 5(1)(d), 6(1) and 8 of Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing;

- 2. Dismisses the action as to the remainder;**

- 3. Orders the Hellenic Republic to pay two thirds of the costs. The Commission of the European Communities is ordered to pay one third of the costs.**

[Signatures]